

30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding paragraph (xx) read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(xx) Revisions to the following rules, as submitted to OSM on October 3, 1994, are approved effective February 15, 1995.

405 KAR 7:080	Small operator assistance
Section 5(2)	Annual Coal Production.
Section 5(2) (a) and (b).	Ownership of the Applicant.
Section 6	SOAP Application Form.
Section 8(2)(a)(11)	Information Requirements.
Section 8(2)(b)(11)	Information Requirements.

405 KAR 7:080	Small operator assistance
Section 11(1)	Services Performed.
Section 11(1)(e)	Sale, Transfer, or Assignment of Permit Rights.

3. Section 917.16 paragraph (1) is removed.

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the New Mexico regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) (SMCRA). New Mexico proposed the addition of rules pertaining to the exemption for extraction of coal incidental to the extraction of other minerals. The amendment revises the New Mexico program to be consistent with the corresponding Federal regulations. EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmet, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated October 26, 1994, New Mexico submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. NM-

716). New Mexico submitted the proposed amendment in response to a February 7, 1990, letter (administrative record No. NM-563) that OSM sent to New Mexico in accordance with 30 CFR 732.17(c). New Mexico submitted the amendment with the intent of making the New Mexico Coal Surface Mining Commission (CSMC) rules consistent with the corresponding Federal regulations. New Mexico proposed new rules to implement sections 69-25A-1 through 35 of the New Mexico Surface Coal Mining Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. The provisions of the New Mexico Coal Surface Mining Commission (CSMC) Rules 80-1 that New Mexico proposed to add are at new Chapter O, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, and include sections 34-1, scope; 34-2, definitions; 34-3, application requirements and procedures; 34-4, contents of application for exemption; 34-5, public availability of information; 34-6, requirements for exemption; 34-7, conditions of exemption and right of inspection and entry; 34-8, stockpiling of minerals; 34-9, revocation and enforcement; and 34-10, reporting requirements.

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58801), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM-718). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 15, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of CSMC Rules 80-1-34-2, definition of "cumulative measurement period," and 80-1-34-9, administrative review of revocation decisions. OSM notified New Mexico of the concerns by letter dated December 20, 1994 (administrative record No. NM-724). New Mexico responded in a letter dated December 20, 1994, by submitting revisions for the two rules (administrative record No. NM-723).

Based upon the revisions to the proposed program amendment submitted by New Mexico, OSM reopened the public comment period in the December 28, 1994, **Federal Register** (59 FR 66837, administrative record No.

NM-729). The public comment period ended on January 12, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by New Mexico on October 26, 1994, and as revised by it on December 20, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

Addition of Substantive Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

New Mexico proposed the addition of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

CSMC Rule 80-1-34-1 (30 CFR 702.1), scope,
 CSMC Rule 80-1-34-2 (30 CFR 702.5), definitions,
 CSMC Rule 80-1-34-3 (30 CFR 702.11), application requirements and procedures,
 CSMC Rule 80-1-34-4 (30 CFR 702.12), contents of application for exemption,
 CSMC Rule 80-1-34-5 (30 CFR 702.13), public availability of information,
 CSMC Rule 80-1-34-6 (30 CFR 702.14), requirements for exemption,
 CSMC Rule 80-1-34-7 (30 CFR 702.15), conditions of exemption and right of inspection and entry,
 CSMC Rule 80-1-34-8 (30 CFR 702.16), stockpiling of minerals,
 CSMC Rule 80-1-34-9 (30 CFR 702.17), revocation and enforcement, and
 CSMC Rule 80-1-34-10 (30 CFR 702.18), reporting requirements.

Because these proposed New Mexico rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

IV. Summary and Disposition of Comments

Following are summaries of all oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico program.

The Bureau of Mines responded in a telephone conversation on November 15, 1994, that it had no comments on the proposed amendment (administrative record No. NM-719).

The U.S. Army Corp of Engineers stated in letters dated November 16, 1994, and January 6, 1995, that it found the changes to be satisfactory (administrative record Nos. NM-721 and NM-730).

The U.S. Fish and Wildlife Service (the Service) provided comments in a letter dated December 1, 1994 (administrative record No. NM-722). Due to concerns of the Service about risks to fish and wildlife from selenium, mercury, and polycyclic aromatic hydrocarbons (PAH's) contamination, it recommended that the proposed amendment be revised to require permit conditions for testing and monitoring mercury, selenium, and PAH's for such mining operations that extract coal incidental to the extraction of other minerals.

The Federal regulations at 30 CFR Part 702 exclude from SMCRA regulation those mining operations that extract coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$ percent of the tonnage of minerals removed for purposes of commercial use or sale. Because New Mexico's proposed incidental coal extraction rules are substantively identical to these corresponding Federal regulations, New Mexico's coal mining rules also do not regulate such mining operations. To the extent that the Service's comments address the mitigation of impacts of selenium, mercury, and PAH's contamination of such mining operations, they are outside the scope of New Mexico's coal mining rules. Therefore, OSM is not requiring New Mexico to revise its coal mining rules in response to the comment.

By letter dated January 25, 1995, the Mine Safety and Health Administration (MSHA) stated that the amendment had been reviewed and that it appeared there were no conflicts with the requirements of 30 CFR (administrative record No. NM-731).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to

those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. NM-717). It responded on November 29, 1994, that it had no objections to OSM's approval of the proposed regulations (administrative record No. NM-720).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record No. NM-717). Neither the SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves New Mexico's proposed amendment as submitted on October 26, 1994, and as revised on December 20, 1994.

The Director approves, as discussed above, CSMC Rule 80-1-34-1, concerning scope; CSMC Rule 80-1-34-2, concerning definitions; CSMC Rule 80-1-34-3, concerning application requirements and procedures; CSMC Rule 80-1-34-4, concerning contents of application for exemption; CSMC Rule 80-1-34-5, concerning public availability of information; CSMC Rule 80-1-34-6, concerning requirements for exemption; CSMC Rule 80-1-34-7, concerning conditions of exemption and right of inspection and entry; CSMC Rule 80-1-34-8, concerning stockpiling of minerals; CSMC Rule 80-1-34-9, concerning revocation and enforcement; and CSMC Rule 80-1-34-10, concerning reporting requirements.

The Director approves the rules as proposed by New Mexico with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 931, codifying decisions concerning the New Mexico program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal

standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding paragraph(s) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(s) The following New Mexico Coal Surface Mining Commission (CSMC) rules, as submitted to OSM on October 26, 1994, and as revised on December 20, 1994, are approved effective February 15, 1995.

CSMC Rule 80-1-34-1, scope.

CSMC Rule 80-1-34-2, definitions.

CSMC Rule 80-1-34-3, application requirements and procedures.

CSMC Rule 80-1-34-4, contents of application for exemption.

CSMC Rule 80-1-34-5, public availability of information.

CSMC Rule 80-1-34-6, requirements for exemption.

CSMC Rule 80-1-34-7, conditions of exemption and right of inspection and entry.

CSMC Rule 80-1-34-8, stockpiling of minerals.

CSMC Rule 80-1-34-9, revocation and enforcement.

CSMC Rule 80-1-34-10, reporting requirements.

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